

**Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Monday, April 16, 2007
6:30 p.m.**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPB = Warren County Planning Board
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Dept of Environmental Conservation

Present: Chairman Greg Smith, Jeff Anthony, Kam Hoopes, Tom McGurl, Jr., Bill Pfau, Town Counsel Michael Muller, Zoning Administrator Pam Kenyon

Absent: Tony DePace and Meredith McComb

Chairman Greg Smith opened the meeting at 6:32 pm by asking for corrections to the March 19, 2007 ZBA minutes.

RESOLUTION

Motion by Kam Hoopes to approve the March 19, 2007 minutes as presented. Seconded by Jeff Anthony. **All in favor. Motion carried.**

G. Smith noted that the Nolan item has been tabled and gave all applicants notice that there are only five ZBA members present so they have the option of tabling their item(s) until the next meeting if they so wish.

1) V07-10 GOW, TIMOTHY & JUDY. Represented by Curtis Dybas P.A. For a proposed bathroom addition on the south side and screen porch addition/deck on the north side of single-family dwelling, seek area variance to alter a structure in accordance with Section 200-56A. Section 125.00, Block 1, Lot 1, Zone RL3. Property Location: 28 Northwest Lane. Subject to WCPB Review.

Curtis Dybas, P.A., representing Timothy and Judy Gow, gave an overview and said that (1) part of the problem is room--the master bathroom is small and there is very little closet space, (2) the house faces due south down Northwest Bay, so on the west end they propose to construct a 6.5 ft. by 12 ft. addition to the bedroom/bathroom, (3) on the east side they propose to remodel the current screened porch into a deck to also serve as an overflow dining space, (4) they also propose to construct a new screened porch and extend the deck around it, (5) they propose to construct a new covered exterior stairway to get to the basement level of the house, (6) on the lower level there is a studio that they wish to extend which would be under part of the second floor addition to increase storage space and (7) he would be putting an addition on a non-conforming structure which is why he is here for the variance.

K. Hoopes asked how big the lot is and Curtis Dybas said that it is 21.8 acres. K. Hoopes said that (1) the applicant has 21 acres and exceed all setbacks, however, the existing house is over 35 ft. high and (2) the only reason they are here is because of Section 200-

56A, which means the applicants are just doing something to a non-conforming structure. G. Smith said that is the only reason the applicants are here.

B. Pfau asked if the applicants obtained the building permit in 1989 or if it was a previous owner and Curtis Dybas said yes, these applicants built the house in 1989. B. Pfau asked if the height of the building has caused any problems over the years and Curtis Dybas said no, it is very difficult to see this house from the lake. G. Smith agreed. J. Anthony asked if all of the construction is contained on existing decks, footprints and other building elements that are there and Curtis Dybas replied by saying (1) no, there is approximately a 500 sq. ft. net gain on-site footprint, (2) what he is building on is solid rock—all of the construction will be on piers, there is no foundation going under, he will pin on rock and it will be on posts. G. Smith agreed and said that he sees no problem with this.

B. Pfau asked why P. Kenyon isn't asking the applicant to apply for a variance for height and P. Kenyon said that the statute of limitations has run out on that.

No correspondence.

No comments from public in attendance.

WCPB determined no County impact.

RESOLUTION

The Zoning Board of Appeals received an application from Timothy and Judy Gow (V07-10) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and there being no public comment regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, the additions will meet setbacks;

- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, because the house itself does not meet the height restrictions;
- 3) The request is not substantial;
- 4) The alleged difficulty is not self-created;
- 5) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon motion duly made by Bill Pfau and seconded by Kam Hoopes, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor.**
Motion Carried.

- 2) **B07-11 LAVOY, ANNEGRET.** For a proposed indoor boat maintenance facility involving less than 1,000 sq. ft. not visible from the public right-of-way and neighboring properties, seeks area variance for deficient density. 2.6 acres required, 1.31 acres exist. Section 186.06, Block 1, Lot 1.2, Zone RM1.3. Property Location: 4763 Lakeshore Drive. Subject to WCPB Review. *Note: This application is in conjunction with SPR07-11 to be heard by the Planning Board on April 19, 2007.*

Kyle LaVoy, representing Annegret LaVoy, gave an overview and said that (1) they currently have a permit to build a two-bay garage as an accessory structure to the house, which they have not begun construction on to date, (2) they would like permission to do fiberglass boat repair in one of the bays of the garage and (3) he sees in the code that it is a permitted use and has only just found that 2.6 acres is needed.

G. Smith asked if this is something he'll be doing by himself and Kyle LaVoy said yes, it would primarily be done in the winter.

K. Hoopes asked why 2.6 acres are required and P. Kenyon said that he is in the 1.3 zone; 1.3 acres is required for the single-family dwelling and 1.3 acres is required for the boat maintenance facility. It requires site plan review, which the applicant will be going in front of the PB for on Thursday. Counsel said it is not a question of usage—what is being requested is allowed in the code, it is just a matter of density.

G. Smith said that given where the proposed location is and that the applicants own the adjacent piece of property, he doesn't see where it is a problem. K. Hoopes asked how they would get the boats up there in the winter and Kyle LaVoy said that they are planning on flattening the driveway out when they build the garage.

J. Anthony asked if the applicants ever used the existing garage for the same use they are applying for and Kyle LaVoy said no. G. Smith asked when the old garage would be torn down and Kyle LaVoy replied by saying the old garage would be removed when the contractor comes to build the new one. B. Pfau asked if the PB will have final say on whether or not this project goes through. P. Kenyon and Counsel said yes, that is correct.

Correspondence read into the record in entirety by Counsel:

- Letter from Maxine Ackerman received 04/16/07 - opposed.

G. Smith said that Maxine Ackerman doesn't realize this will be a winter operation and not entail hauling boats across the street all the time in the summer. Kyle LaVoy said that he spoke with their neighbor Langdon who had no problem with it. J. Anthony asked what type of chemicals would be used and the type of disposal is planned for it. Kyle LaVoy said that the company that (1) they plan on using for disposal is Safety Clean out of Albany and (2) regarding ventilation, he has read in Warren County code that there needs to be exhaust fans for employee safety, but he is willing to do anything that appeases the neighbors if it is legal.

T. McGurl asked why the applicant is here if he already has permission to build the garage and P. Kenyon said that it is a different use.

WCPB determined no County impact.

No comments from public in attendance.

G. Smith said that if it is just a winter thing and the applicant won't be doing it in the summer with the doors open, then he doesn't see how it would affect anyone. G. Smith asked what the plans are for the summer and Kyle LaVoy said that it would be the same as it has been--it would just be for empty trailer storage.

K. Hoopes said that he would be more interested in the isolated location of the garage being 400 ft. from the main road, but he doesn't see how a two-bay garage would be a traffic problem or how this use would be a problem.

RESOLUTION

The Zoning Board of Appeals received an application from Annegret LaVoy (V07-11) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #2 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, there is an interesting twist in the Zoning Regulations that doubles the required acreage, but he thinks it has been adequately demonstrated that it won't be necessary in this situation;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, it has been pretty well demonstrated that this is a pretty remote location—it shouldn't affect the neighborhood in an adverse way;
- 3) The request is not substantial;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, the question of fumes and such can be dealt with;
- 5) The alleged difficulty is somewhat self-created, but he doesn't see that as a deal breaker for the ZBA's purposes.

The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon motion duly made by Kam Hoopes and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor. Motion Carried.**

- 3) **V07-12 SARIS GAGE REALTY. (Performance Marine)** represented by Jason Saris. **1)** For the construction of a proposed boat storage building, seeks area variance for deficient setbacks. a) Side minimum; 16 ft. is required, 3 ft. is proposed. And b) Rear; 30 ft. is required, 8 ft. is proposed. **2)** To alter pre0-existing non-conforming structure, specifically to construct two covered entryways, seeks area variance to alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 171.19, Block 2, Lot 2, Zone GB5000. Property Location: 4938 Lakeshore Drive. Subject to WCPB Review. Subject to SEQ. *Note: This application is in conjunction with SPR07-13 to be heard by the Planning Board on April 19, 2007.*

Jason Saris, representing Saris Gage Realty (Performance Marine) gave an overview and said that (1) they will be going before the PB for site plan review on both of these issues, (2) on the presently existing building they are doing a cosmetic facelift and they'd like to deal with some water run-off issues, (3) they propose to put a small gabled roof over the entranceway and another smaller roof over the entranceway to the shop, (4) they also propose to build a shed-style storage building in the northern area that they use to work on boats and (5) neither request would change the way the facility works. He then addressed each of the variance criteria and gave his thoughts on how this project satisfies the criteria.

G. Smith said that the older building is larger than what the applicant wants to put there and asked if the front would be open. J. Saris replied by saying yes, it would be open. G. Smith said that (1) he thinks it would be better to have it open, (2) it is tucked down behind Frank's so, you can't really see it from the road, (3) he thinks it would look a lot better, (4) he understands where the applicant is coming from in having to dig boats out in the winter time when they are frozen in, it will keep them neat and clean, (5) it is well-tucked down in there and there is nobody behind the building who would be looking down on this saying it is ugly and (6) the proposed colors are earth tone, which he thinks will look good. Jason Saris said that they would like to make it blend as much as possible and the existing tree coverage helps them do that.

T. McGurl said that the cosmetics on the back of the building are a good idea, but he is concerned about how far it will be coming out looking down from Frank's. B. Pfau said that (1) the boats will be there regardless of if the building is there or not, (2) the question is if the building housing the boats is going to cause any problem in this area from a zoning aspect and (3) he questions the height of the building as being looked down upon from Frank's. Jason Saris replied by saying that (1) they are fortunate in the respect that they have natural elevation changes to work with which helps mitigate that problem, (2) if you look at the boats presently in the yard, they have to build a tent on it to tarp it and protect them and (3) the proposed building wouldn't be much higher than the tarp that exists there now. T. McGurl said the boats would be inside and the front of the building would look nicer. G. Smith said that with all of the high performance boats the applicant works on they would need the depth of the building.

No correspondence.

WCPB determined no County impact.

J. Anthony asked if the applicant needs a long form for SEQR and Counsel said no, at this stage a short form is more than adequate.

From the public, Kathy Spahn, resident of Congers Point, asked for clarification on side and rear setbacks. Jason Saris showed the setbacks on the map to clarify. Kathy Spahn said that she has a view of the boatyard and asked what the building would look like. G. Smith said that she would only see the building's sides and rear—not the open front or the boats. Kathy Spahn said that she is concerned with the trees that were cut down a few

months ago that gave way to them now overlooking the yard and Jason Saris said the trees that came down were not from their (Performance Marine) property.

From the public, Dan Behan, representing Bolton Landing Marina, said that (1) they are immediate neighbors of Performance Marine, (2) they support the project and (3) the diseased trees that came down that Kathy Spahn referenced came down before he was involved with the property, but they do plan on putting shrubs up there to again screen it properly.

G. Smith asked if it would be a pre-fabricated building and Jason Saris said no, it will have a metal roof on it, but they have not made a decision on the materials for the sides—it would be built for the site. B. Pfau said that he believes this is the best-managed way to do this given the property. G. Smith said that (1) he doesn't see where there would be any issues and (2) he thinks it is a nice project that will squeeze right down in there just fine.

RESOLUTION

The Zoning Board of Appeals received an application from Saris Gage Realty (Performance Marine) (V07-12) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #3 of the agenda.

The Board makes the following conclusions of law:

- 1) The benefit could not be achieved by any other means feasible to the applicant besides an area variance;
- 2) There will be no undesirable change in neighborhood character or to nearby properties, there has been a metal building there off and on for quite some time;
- 3) The request is not substantial, the boats are parked there anyway, they are just going to cover them up;

- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, stormwater measures will be taken;
- 5) The alleged difficulty is not self-created, as they are from the tree sap and acts of God on the boats.

The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon motion duly made by Kam Hoopes and seconded by Bill Pfau, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor.**
Motion Carried.

- 4) **V07-13 NOLAN, AGNES.** Represented by Atty. Mark Rehm. In accordance with Section 200-37B(b), seeks area variance for the removal of vegetation within 10 ft. from the top of the slope of a drainage way. Section 171.11, Block 1, Lot 54, Zone GB5000. Property Location: Lakeshore Drive adjacent to Lake George Camping Equipment. Subject to WCPB & APA Review.

This item was tabled by the applicant.

- 5) **V07-14 LICHTENSTEIN, ROBERT & MARJORIE.** Represented by Jarrett Martin Engineers. Fore the construction of a proposed retaining wall associated with a septic system, seek area variance for deficient setbacks. a) Front; 50 ft. is required from the edge of the right-of-way, 1 ft. is proposed. b) Side; 30 ft. is required, 1 ft. is proposed. Section 157.05, Block 1, Lot 40, Zone RCL3. Property Location: Brook Hill Drive (behind Lagoon Manor). Subject to WCPB Review.

Note: ZBA member Jeff Anthony recused himself and stepped down from the ZBA bench for this item, as he has worked with the neighboring landowners for over 20 years.

Atty. Stefanie DiLallo Bitter gave an overview and said that (1) they are seeking two area variances which are associated with a retaining wall being proposed with the proposed septic system, (2) without the variance being granted the property is unusable, (3) the proposal for the retaining wall setbacks is similar to other adjacent uses being proposed this evening, (4) Lagoon Manor supports the application being presented this evening and (5) the proposed Elgin septic system will address any environmental concerns.

Bob Holmes of Jarrett Martin Engineers said that (1) the reason for the variances they are requesting is to facilitate and place a wastewater system on the property and they are being confined by the lake itself, trying to maximize the setbacks to the lake as well as meeting the 100 ft. setback to the southerly neighbors' well, (2) the well is just over the property line, which is why they are tucked into the northwest of the property, (3) placing the conforming wastewater system on the property was not possible because of the tapers

that would be required coming off of the system and (4) the reason they are confining the wastewater system in a retaining wall is to make sure they are placing it within the property and that it does not overflow onto the neighboring property.

K. Hoopes said that (1) the ZBA really doesn't care about what goes inside that retaining wall as long as the septic is approved, that is fine and (2) the ZBA is concerned only with the retaining wall itself, (3) the question is of the offensiveness of the encroachment on the right-of-way, which he doesn't think is offensive at all and (4) the property has not been able to be used and it is a simple retaining wall that he is in favor of.

T. McGurl asked what the grade is and Bob Holmes said that it is an average of 17%. B. Pfau asked about the mound system and if it is possible to build it without the wall and Bob Holmes said no, because of the tapers that are necessary, without a retaining wall he would need to taper the fill material off at a 3 on 1 slope which he doesn't have the room to do.

B. Pfau asked the height of the proposed retaining wall and Bob Holmes said that (1) the 5 feet shown is a maximum height of the wall, (2) the lakeside will be a little bit shorter and (3) the side toward the right-of-way should be about 4 to 4 1/2 feet. P. Kenyon said that on map 3 of 3 the wall looks higher than 5 feet at the location of BS-2. Bob Holmes said (1) yes, the top of the retaining wall will be below grade and (2) they are looking to use ballasted fill, which is dense clay, in an effort to ensure they do not encroach wastewater to the neighboring well. P. Kenyon asked if the 5 feet is then what you would actually see and Bob Holmes said yes, but not necessarily in that location. K. Hoopes asked how close the nearest structure in the Brook Hill Development area is and Bob Holmes said to the north, he does not know, but their understanding is that it is quite a distance. K. Hoopes said that it is a tight little pocket down there. Bob Holmes said that the O'Hearne's to the south are at the dead end of the right-of-way and the Brook Hill property is quite a bit larger in size. K. Hoopes said that there is a big separation from the buildings in that particular corner of the lot. B. Pfau said that most setback requests could be judged on how they affect the people you are encroaching that close and asked if there would only be one other neighbor that would pass the right-of-way at that point. Bob Holmes said yes.

T. McGurl asked about the other options Bob Holmes said were not optional and Bob Holmes said that since it is new construction a holding tank is not a possibility and short of that they are proposing advanced treatment that goes beyond your standard Elgin or grade system in the hopes of providing a higher quality to protect the lake and neighboring wells.

Correspondence read into the record in entirety by Counsel:

- E-mail forwarded from Atty. DiLallo Bitter from Roger L. Gebo, Member of Board of Directors of Lagoon Manor dated 04/16/07 - not opposed.
- Fax dated 04/16/07 from Glenn Waehner, Brook Hill Development - opposed.

From the public, Frank McDonald, representing Glenn Waehner, said that (1) while he respects the fact that the Lichtensteins, after having owned the property for quite a number of years, should be able to develop it and there should be a way to do that, (2) building the structure 1 ft. from the property line without violating the property line and being on somebody else's property—many other times things have come up at the ZBA where they didn't really like that because somebody has to either go over there to build it or maintain it should there be a problem with it, (3) most importantly, the HOA is not as much involved and the property just north of the Lichtenstein property is approved by the Attorney General for a structure, a home, to be built here by the developer and (4) he doesn't think enough research has been done for what will happen north of the septic system.

B. Pfau said that he thinks there should be some discussion of the possibility of having a 3 ft. setback on both property lines and leaving room for building it in some sort of screen. Bob Holmes said that if they were to pull the retaining wall in tighter to the wastewater system it will in essence reduce the effective area available for absorption as it gets into the ground and Atty. DiLallo Bitter said that they also have the 100 ft. setback from the neighbor's well, which is where they are now. K. Hoopes said you also can't put it under the driveway, but the driveway is a movable feature. Atty. DiLallo Bitter said that the 100 ft. setback to the circle binds them into the corner. Bob Holmes said that on the right-of-way side they are confined from because the deed covenant of the use of the right-of-way is for ingress and egress, not for another use. G. Smith said that in building this retaining wall the applicants would be trespassing on another person's property on the north side. K. Hoopes said that (1) it looks like there is room for further development from Brook Hill Development Corp., but it just hasn't been subdivided and (2) the preference is going to have to be given to the presently subdivided Lichtenstein property above the undefined Brook Hill Development.

B. Pfau asked if there would be grass on top and if there was any other way to make it look more screened. Bob Holmes replied by saying that (1) they could explore that and (2) the type of wall they are proposing is a segmental retaining wall where they can typecast the color to match the landscape.

G. Smith asked if this type of system could be put in the ground deeper and Bob Holmes said that they are contending with ledge rock in close proximity to this area. T. McGurl asked if this is basically a glorified holding tank that will be an above ground structure that will hold water in it that will percolate away and Bob Holmes said that they are building it up with fill material that will leach it and on the lower side of the system as it gets closer to the lake they do have soil for the effluent to percolate into. T. McGurl asked if there is three inches of soil where the water will eventually percolate to if it hits rock and Bob Holmes said that ultimately it would end up in rock then towards the lake. B. Pfau said that he would feel comfortable that the system would work if the TB acting as the Local BOH and the Town Engineer both approve it.

Atty. DiLallo Bitter said that they are willing to reach out to the neighbor to get his thoughts on the matter. G. Smith said that (1) he doesn't feel comfortable giving the

applicant the variance at this time, (2) he feels that is a good idea and (3) the public hearing would stay open until next month. B. Pfau said that this isn't a deal breaker from his point of view, but he would like the applicants to explore other options and after doing so, it may be the only way it can be done. T. McGurl said that just because you pay taxes on a lot and it is a difficult lot, it doesn't entitle one to a variance.

RESOLUTION

Motion by Kam Hoopes to table the application pending additional information. Seconded by Tom McGurl. All in favor. Motion carried.

- 6) **V07-16 PEPPER, JAMES & SWETLAND, SALLY.** To alter pre-existing non-conforming single-family dwelling, seek area variance for 1) a deficient shoreline setback. 75 ft. is required, 45 ft. is proposed. and 2) To alter a pre-existing non-conforming structure in accordance with Section 200-56A. Section 156.12, Block 1, Lot 28, Zone RCM1.3. Property Location: 35 Cherry Avenue. Subject to WCPB Review.

Note: J. Anthony resumed his position as ZBA member for this and all remaining agenda items.

James Pepper gave an overview and said that (1) the photographs he handed out show the shoreline north and south to show the ground cover, (2) they began a project they were given permission for but never finished it, (3) the existing house was built in 1965 or 1967, (4) both adjacent neighbors have reviewed the project and are in favor of it as acknowledged in the letters they wrote, (5) the code when they obtained the building permit for the project was 15 foot sideline setback from the property line to the foundation line and it is now from the property line to the roof overhang so technically the 30 inch roof overhang on the south side could not be in compliance by today's code, so he needs a variance for the 30 inch roof overhang, (6) the 30 inch overhang goes all the way around the house, so it is also a little bit true on the north (he referenced the map to clarify that situation) and (7) the other issue is the 12 ft. by 12 ft. enclosed breakfast porch on the north side where the wall line of that meets the 16 ft. setback but the roof overhangs the setback.

B. Pfau asked if the lakeside setback required now is 75 ft. and P. Kenyon said yes. James Pepper said that it was a 50 ft. setback when they poured the concrete. K. Hoopes asked is the 15 ft. setback is the same and P. Kenyon said yes, it is still a 15 ft. setback required, but originally they counted it from the foundation, not the overhang which is the way it is in the code now.

James Pepper said that if he completed the project when he had been granted the original permit then it wouldn't have been an issue on the north or south sides other than the 12 ft. by 12 ft. porch. B. Pfau asked the status of the original permit and Counsel said that to the extent that it included any variances granted, those would run with the land. James Pepper said that the original permit did not include the change in the roof structure on the

existing house—at this point it increases in height by 7 or 8 ft. K. Hoopes asked if this house is pre-existing non-conforming and P. Kenyon said yes. Counsel asked if the original permit relied on any grant of variance and James Pepper said no, it completely complied with the zoning at the time. Counsel said that (1) P. Kenyon starts at the perfect spot, which is that this is pre-existing and non-conforming and (2) any changes on this thing are going to require a variance. K. Hoopes said that (1) the key item is the 45 ft. from the lake, (2) the reality of the situation is that it is a 75 ft. setback required and (3) he thinks the ZBA wants to proceed to look at it as a pre-existing non-conforming house, (4) if the applicant wants to make a change to the deck the ZBA needs to determine if it is a change that is substantial, (4) it is a very wooded area down there, so he doesn't see a problem with it, (5) regarding encroaching more toward the lake, there is a diagonal here where the applicant may be going about 5 ft., which is well screened and (6) the 12 ft. by 12 ft. breakfast nook isn't further encroaching on the lake. B. Pfau asked what the point of the 4 ft. by 14 ft. cutout was and James Pepper said that originally that was as close as they could gage the 50 ft. setback to each of the corners.

B. Pfau said that he doesn't see that the applicant is going to be gaining views from the lake and it is well screened from the lake. P. Kenyon asked if it is correct that the applicant doesn't meet the sideline setback, because it looks as though it does meet the sideline setbacks on the map. James Pepper replied by saying that (1) the south-side wall line meets the setback, but because of the change in the determination of the setback, the overhang would not meet it and (2) it is presently 15 ft. to the building envelope to the edge of the roof overhang. Further discussion ensued regarding setbacks needed and the conclusion was that two more variances would be needed: one for south side and one for the north side.

Correspondence read into the record in entirety by Counsel:

- Letter from Theresa Ronning dated 04/07/07 - in favor of project.
- Letter from Barbara J. Ahern dated 04/16/07 - in favor of project.

No comments from public in attendance.

WCPB determined no County impact.

G. Smith said that (1) he doesn't have a problem with what the applicant wants to do and (2) it is a very secluded lot—when the applicant is done it won't look very different than it does now, because it is well screened.

RESOLUTION

The Zoning Board of Appeals received an application from James Pepper and Sally Swetland (V07-16) for an area variance as described above.

And, due notice of the public hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Board;

and, whereas the Warren County Planning Board determined that there was no County impact;

and, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application;

this Board makes the following findings of fact:

The application of the applicant is as described in Item #6 of the agenda.

The Board makes the following conclusions of law:

- 1) There will be no undesirable change in neighborhood character or to nearby properties, the applicant has no objections from neighbors on either side;
- 2) The benefit could not be achieved by any other means feasible to the applicant besides an area variance, the building itself does not meet setbacks;
- 3) The request is not substantial, the addition to the front of the house on the lakeside is very minor—they are filling in a square and the breakfast nook addition affects more the sideline than it does the lakefront and they are very minor on both the north and south sidelines;
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, this is a well screened lot that has been that way for a long time and will continue to stay that way and not very noticeable from the lake;
- 5) The alleged difficulty is not self-created, because the house has been there from the 1960s.

The benefit to the applicant is not outweighed by the potential detriment to the health, safety and welfare of the community.

Now, upon motion duly made by Bill Pfau and seconded by Tom McGurl, it is resolved that the ZBA does hereby approve the variance request as presented. **All in favor.**

Motion Carried.

- 7) **V07-17 REID, ANNA.** Represented by Atty. Dennis Phillips. For the construction of a proposed single-family dwelling, seeks area variance for a deficient shoreline setback. 75 ft. is required, 50 ft. is proposed. Section 141.00, Block 1, Lot 16, Zone

RL3. Property Location: Lakeshore Drive (Northwest Bay). Subject to WCPB Review & APA Review.

Atty. Dennis Phillips, representing Anna Reid, gave an overview/history of the property and said (1) when the applicant bought the parcel in 1996 it was bounded on the east by the Rogal property and on the west by some owners who had purchased back in 1984, (2) they are proposing a single-family residence within a single-family residential neighborhood, (3) the house site location is about 180 ft. from Lake George and they are asking for a variance relative to the Wing Pond Outlet, so they are looking for a setback from a stream that is a tributary to Lake George and (4) in looking at the economics of the project in terms of use and zoning, they feel it is reasonable under the circumstances of a difficult site.

J. Anthony asked if the land between the house and the stream is on a 45% grade and said that the distance between the building and the stream is all 45% until you get to the stream. J. Anthony then asked how the applicant will handle construction on that and how they will be able to get that close to the stream without causing environmental impacts on that stream. Atty. Phillips said that the environmental concerns are something they would be addressing that when they get to the APA for review. J. Anthony said that in the guidelines of the APA there is a clause that says absolutely no construction anything over 25%--they will not approve something on 25% over. Atty. Phillips said that he thinks the APA will consider this property as being a pre-existing property, (2) they know that as far as the statute and regulations are concerned with the APA, that is the law that would apply to a site of this nature, (3) they also know that is guidelines and that it was written in 1977 and specifically there is a disclaimer in that that says that they are merely guidelines and (4) the APA may be adhering to these guidelines as a matter of policy, but those guidelines are not law and if they have that conversation with the APA, he thinks that under the circumstance of this particular site, they would be engaging in that dialogue. J. Anthony said that (1) the applicant has other locations on this property that are flatter and farther away from the stream that would preclude needing a variance at all and preclude getting on steep slopes and take away all of the applicants problems just by moving up the hill a little bit in the area marked as "Area 2.56" which is relatively flat and closer to the sewage disposal area, (2) the applicant is now 350 ft. plus from the house to the sewage disposal area and pumping up hill, (3) he thinks the applicant has some significant problems facing the APA on this project, (4) in Bolton, they are coming down very hard on this exact very criteria on other projects that are currently before the PB and APA and (5) he would say that the applicant has at least two other spots to locate the proposed house on this site that would alleviate the need for any variance. Atty. Phillips replied by saying that (1) he appreciates the good advice, (2) he is representing the client and he is looking at what the client would like—there is a great allure for Lake George and the closer the better and (3) the engineer has said that this is a viable building site. J. Anthony said that (1) everyone wants to be near the lake, but when he visited the house site he could hardly see the lake from the house site and (2) by moving the building up the hill a bit it would avoid all the problems. T. McGurl said that (1) he agrees with J. Anthony, in that they have to consider all options. In this case there is another option.

B. Pfau asked if there was a previous house site where the pre-existing road was and Atty. Phillips said no, to his knowledge there was no old house site on the property when the applicant bought it. K. Hoopes asked when the drive surfaced and Atty. Phillips replied by saying that he believes when the 1983 subdivision was done that the road would be a driveway for what would be a building site on that particular property. K. Hoopes asked if Atty. Phillips thinks the gravel drive went in concurrent with the plans to subdivide and Atty. Phillips said that he would guess that but he would have no way of knowing exactly when that was constructed, but it was there when the applicant bought the property.

B. Pfau asked about P. Kenyon's concerns and P. Kenyon said that she is concerned with cuts and fills, height and topography and asked if Atty. Phillips has answers to her questions. Atty. Phillips said that (1) he has left a message for the engineer regarding those questions—he is still waiting for an answer and (2) he is willing to table this application until he gets the information if the ZBA wishes. J. Anthony said that (1) the grading plan is so general that he can't picture it based on the plans and (2) if the engineer did a cross-section through the site in a northeast southwest direction right through the building, it would be very illustrative to the ZBA to see what is happening with the grading and the cuts and fills in proximity to the stream and how steep the slope really is. G. Smith said that the ZBA doesn't have enough information. K. Hoopes said that he falls back on if the benefit can be achieved by any other means and he doesn't feel this proposal is the best option.

Correspondence read into the record in entirety by Counsel:

- Letter dated 04/13/07 from Atty. Robert H. Hafner of Miller, Mannix, Schachner & Hafner, LLC representing Victor and Yvette Hershaft, nearby property owners - concerns.

From the public, John Rogal, representing several neighboring property owners Rogals, Albrights and Linders and the Lake George water quality in general, who oppose the project said that (1) the site that has been proposed has a number of problems—the sloping, grading, the variances, etc., (2) their primary concern is with the environmental impact that any construction on this site would have, (3) regarding the road that was established, it was done back in 1989 or 1990 by Eric Stackland—who cut out guardrail to do it--without any approval from the APA or any Town of Bolton governing body, once it was found out a cease and desist order was put on it stopping the construction of that road, so that road was never intended to be there in the first place to go to a house that had been approved, (4) since construction, the erosion of this sand drive has built up about one foot in the bay and continues to do so each year, (5) there is significant impact to the water if the sewer is put where it is proposed, due to the fact that it is underneath the water table according to a review by Sylvia Pope-Rogal (John Rogal's sister), who is an Environmental Senior Scientist and Professional Geo-Scientist in Austin, Texas—her concern is that any run-off from any major springtime flood would affect any ability to retain the sewage in the tank, (6) the retention area should be re-vegetated using native

plants similar to those of the existing wetlands, (7) the septic tank and the pump tank should be built such that the bottom of the septic tank is at least two ft. above the highest level of the water table observed during the year, since this area is identified as wetlands according to the Bolton town maps, when the water table is high it is assumed to be the ground surface or slightly higher during spring run-off, (8) the drain field from the septic system should be constructed entirely out of the flood plain associated with Walker Creek, (9) seeping effluent from the drain field may quickly migrate to Walker Bay due to the short distance between the drain field and the stream, (10) effluent seepage into the lake could impact drinking water quality for residents who draw drinking water from the lake, (11) if this site plan is approved by the ZBA there should be a requirement by the Town of Bolton that the property owner empty the tank at least once a year—this requirement is intended to minimize the volume of waste material that can be inundated during the spring run-off season when the wetlands are flooded, (12) due to the structural instability and increased erosion potential of the fill material used to construct the existing illegal driveway, the proposed resident must provide a means of stabilizing the filled areas and any new areas of disturbance and (13) the drawings for the house itself shows a downstairs from the kitchen but the plans no longer show a basement, so he is assuming they are planning to blast some to get a basement in there and doing so would cause further construction to the site as well as probably be more than 35 ft. from the base of the house to the roof of the house. J. Anthony asked if John Rogal had direct knowledge that there was a basement level in this and if so if it would have been a basement walk-up that would have added to the building height and John Rogal said no, he does not have direct knowledge of that.

From the public, Chris Navitsky, Lake George Waterkeeper, said that (1) they have several concerns on this project, (2) they are concerned with the repairing and buffer of the corridor—the town coding addresses the building setback which the applicants are looking for relief from—they are even more concerned about the replanting of vegetation within the setback as the applicant is looking to remove vegetation within 30 ft. of the stream, (3) it is extremely steep slope and the removal of vegetation on such severe slopes as present on the site will result in significant run-off impacts, which isn't even addressed in the little amount of information given on stormwater, (4) the photos show that the banks of the stream are already unstable and eroding—the proposal will just make the existing condition worse, whereby impacting the lake, (5) the placement of the fill and how the construction equipment would work here would increase the existing sedimentation problem, (6) the Comprehensive Plan adopted by the Town of Bolton recommends monitoring development in the stream corridors of Northwest Bay, and (7) he agrees with the ZBA that there are alternatives.

Nancy Rogal, adjacent lot owner, said that (1) she knows what is going on there now shows that there is a lake and the applicant is looking for setback to the stream, but the area is currently entirely flooded (she clarified by showing the areas on the map), (2) the road washes out more and more each year and the road was objected to when it was built—they put a culvert in and it is seeping out underneath the culvert, (3) it is a shame to try to place something in an area that is unstable and a wetlands, (4) when the area was subdivided, it was their feeling that the road was built to give access to the planned

subdivision around Wing Pond, which was subsequently stopped and (5) this is a throw away lot that should be given to the conservancy.

Ed Albright, neighboring lot owner, said that (1) he does want to register his concern regarding environmental impact of this project as well, (2) during any type of major spring storm or any storm during the season there is a plume that goes from there just on the existing situation, much less anything that would be new construction or just an effort to stabilize and (3) he is against the project.

Atty. Phillips said that they would like copies of the pictures presented to the ZBA and a copy of the report John Rogal's sister has given that may qualify as an engineering report, (2) as far as the site is concerned, the owner has great faith in modern engineering and it is possible that with some new site plan review of this property, the property can be improved and be better as part of this project, (3) there is no outstanding violation relative to any aspect of this property that he is aware of or any outstanding citation by any governmental body or environmental body, so he would certainly dispute the characterization that it is an illegal road on this property, (4) based on the deed his applicant received from her seller, there is a condition of that deed that any development on this property by reviewed by the APA--there was never anything said to his knowledge by the APA that this property could not be developed considering its pre-existing nature and (5) there is no illegality relative to this property that he is aware of.

K. Hoopes said that the applicant might want to think about tabling this until he can provide more information. Atty. Phillips requested that they do table the matter at this time.

From the public, Bill Rogal, adjacent landowner, said that (1) regarding the road and the illegality of it, the guardrail was just torn down and construction was started on that road and it was built and finished in whatever condition, (2) it wasn't until much later that some kind of fine was issued and (3) that was not the only one—the roadwork going up to Wing Pond was also in that same category, so as far as permits and so forth, Eric Stackland never had any.

RESOLUTION

Motion by Kam Hoopes to table the application pending additional information. Seconded by Tom McGurl. All in favor. Motion carried.

8) Cossman, Peter & Barbara. Seeks to discuss map note on the Keissling subdivision plat (SD02-11) approved by the Planning Board on August 22, 2002. The condition reads as follows: Neither Lot #1 or Lot #2 will be allowed to further subdivide. Section 171.11, Block 2, Lot 13, Zone RCM1.3. Property Location: 5078 Lake Shore Drive. See Also V02-26 for deficient density, setbacks, lot width, etc.

Peter Cossman gave an overview and said that (1) about six months ago they came in to talk to P. Kenyon regarding subdividing the lot they had purchased, (2) Note 11 on the

original subdivision map came up where there was no further subdivision, but nothing was found in the ZBA resolution or the PB resolution at the time of the Keissling subdivision prohibiting further subdivision, (3) P. Kenyon suggested the Cossmans go before the PB for their review, (4) the Keisslings have no objection to the proposal for further subdivision of the lot and (5) the PB was looking for ZBA input since the applicants' property derived from the earlier subdivision that took place almost five years ago.

K. Hoopes said that (1) this came to the ZBA after PB review in 2002 and (2) while they discussed conditions, he made the motion and Meredith McComb seconded it with no conditions, so he doesn't think any conditions exist. P. Kenyon said that she thinks what happened as a result of the PB meeting is that Mr. Keissling went back to the surveyor and had him put the map note on the map and (3) in researching everything she has, there was no such condition. K. Hoopes said that given that there were no conditions in the motion then legally the applicant doesn't have to be here.

Counsel said that what makes this difficult is that P. Kenyon needs to explain to the ZBA how when she is originally confronted with a parent parcel, which would be comprehensively shown on the Keissling survey map of 2002, how she has to inventory and then if you will, sign or allocate densities depending upon what is left of the parent parcel. P. Kenyon said that (1) Lot 1 has the 2.6 acres that is required, (2) the problem is that on Lot 2 it is only .90 acres, so he got a variance to create that substandard lot; he is borrowing from the parent parcel, (3) she believes she has to go back to the parent parcel to see if there was enough acreage, but there is not enough acreage, however, Mr. Keissling was granted a variance and (4) she is not sure how to treat this situation. K. Hoopes said that (1) the recommendation was made no further subdivision, (2) he recalls the discussion about Lot #2 being a unique parcel, (3) there was discussion on the existing buildings and docks and (4) a 2.62 acre parcel was left above it and he is not sure why they felt there should be no further subdivision. B. Pfau said that (1) in creating a substandard size lot in a bigger piece of property, (2) he thinks it makes sense sometimes in return for allowing the creation of a small lot to keep the larger parcel in one piece and (3) he thinks it was a way to level the playing field on this. T. McGurl said that 2001 was not a long time ago and with real estate values if they could have had three lots in 2001, if you are going to subdivide it you are going to get your three lots. B. Pfau said that it was a way of restricting the amount of lots that could come out of this piece of property. Counsel said that (1) it was a borrowing and (2) procedurally it doesn't come out, but for the town requirement does.

Peter Cossman said that (1) they have two homes on the property right now—one is a cottage referenced on the map as a private residence, (2) as he understands the ordinance, they would be entitled to put another house on the property and take the kitchen out of the existing cottage making it into a guest house and (3) they are proposing to have two parcels with one house each rather than one parcel with two homes, so in that sense it would actually make the properties more conforming to the ordinance than they are now.

B. Pfau said that it also opens up the door for having a home and a guesthouse on each parcel after the subdivision. K. Hoopes said that (1) there is another solution the ZBA has recently also contemplated, which is seeking a variance for a second single-family dwelling on one parcel and (2) they just had the situation where they actually allowed somebody to have a second single-family dwelling just so they didn't have to subdivide the lot and make it two little lots with two houses which would open the possibility of having a guest cottage for each house, so that is another possibility. Peter Cossman said that he honestly doesn't know what the outcome would be. B. Pfau asked if the other notes were all put in as conditions in motions by the PB or the ZBA and P. Kenyon said yes. K. Hoopes asked if the PB was making the conditions or recommending the ZBA make the conditions and P. Kenyon said that the PB was making the recommendation for the ZBA on the variance and then they also had their own subdivision application. B. Pfau asked if Note #11 was the not in the PB's approval and P. Kenyon said that is correct; Note #11 was not part of the ZBA or PB conditions.

P. Kenyon said that it has to do with the ZBA because the PB was asking for the ZBA's input because a variance was required when the subdivision was originally approved. Counsel said that the ZBA cannot get hung up on Note #11—it didn't go well and in his position it is a private covenant that Mr. Keissling and the applicant can between themselves privately undo that and he asked if the ZBA understands how P. Kenyon inventories and balances and borrows to create a smaller and impose a larger. ZBA Members said they understood. P. Kenyon said that she has to go back to the parent parcel to see what the density is. Counsel said that (1) he thinks that one of the possibilities may be that the applicant certainly has the right at any time to apply to the town to subdivide, (2) the criteria to which the applicant is held, if for instance it was at the PB level, he would say the same thing to the PB that he has said to the ZBA in that #11 is a private right—don't get hung up on it, you are not prohibiting this subdivision application by relying upon there is #11 and they can't overdo it, (3) having said that he asked if this applicant would need a variance varying the ability to create a lot in what the ZBA has already accounted and piled on the small lot. T. McGurl said yes to Counsel's question. P. Kenyon said that she has to go back to the parent parcel. In this case a variance is needed. T. McGurl said that if one starts to wiggle around the parent parcel that is opening a pretty ugly area. Counsel said that (1) it gets very difficult because they have this problem of looking back at a parent parcel and to figure out what was carved out and allocating what was borrowed, what was reserved, (2) then they have an overlay that they can get into competently and some people now are reserving development rights, so what you see in terms of area doesn't necessarily mean what you can develop—it's getting tough, (3) he thinks the proper path for this applicant would be that he certainly has an absolute right to propose a subdivision application for subdivision approval before the PB, but he thinks a necessary step is that the applicant needs to get a variance from the requirements that have been imposed upon this parcel by P. Kenyon's proper allocation construction of how she pulls out of the parent parcel and (4) it is in the Town Code of how she does that and allocates back.

Peter Cossman asked what he would be seeking a variance from and P. Kenyon said it would be 200-14 and 200-15. Counsel said that (1) the applicant can put the applications

in simultaneously, (2) before the PB can give consideration to it, the applicant needs to get the variance, (3) he does believe that variance is capable of being granted if the applicant can prove all the elements and (4) once the ZBA grants the variance, he believes the PB can comfortably follow suit, because the applicant has enough property there.

B. Pfau asked what you do if you are a ZBA member who feels it should have been a condition from the beginning and Counsel replied by saying that he reserves the right to change his mind, but in safety of that, this ZBA should be held to the requirement that where they have left it as an ambiguity or a misunderstanding, certainly undertaken on no part by the applicant, the applicant wins.

Meeting adjourned a 9:12 pm.

Respectfully submitted by,
Jennifer Torebka
Recording Secretary
04/30/07